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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

10 United States of America,

CR-19-00898-PHX-DLR

11 Plaintiff,

12 vs.

**PROPOSED FORFEITURE JURY
INSTRUCTIONS AND SPECIAL
VERDICT FORMS**

13 David Allen Harbour,

14 Defendant.

15 The United States, by and through undersigned counsel, hereby submits the
16 following proposed forfeiture jury instructions

17 Respectfully submitted this 23rd of January, 2023.

18 GARY M. RESTAINO
United States Attorney
19 District of Arizona

20 s/Kevin Rapp
KEVIN RAPP
21 COLEEN SCHOCH
22 Assistant U.S. Attorneys
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CERTIFICATE OF SERVICE

I hereby certify that on January 23rd , 2023, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing a copy to the following CM/ECF registrant:

Stephen M Dichter
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s/Daniel Parke

INSTRUCTION NO. ____

FORFEITURE: GENERALLY

Ladies and Gentlemen of the Jury, in view of your verdict that Defendant David Allen Harbour is guilty of offenses as charged in Counts 1 through 23 of the Second Superseding Indictment, you have one more task to perform before you are discharged. I now must ask you to render special verdicts concerning property the United States Government has alleged is subject to forfeiture to the United States, in connection with the offenses for which the Defendant was convicted.

As to each item of property for which the Government seeks forfeiture, you must determine whether the Government has established the requisite nexus between the property and the offense or offenses committed by the Defendant. In other words, you must find whether that property is connected to the underlying crime in the way the statute provides.

The particular property/properties alleged to be forfeitable to the United States are as follows:

- A. 18 Karat White Gold Diamond Cuff Bracelet;
- B. 18 Karat Yellow and White Gold Custom Kansas University Jayhawk Pendent and Cable Chain;
- C. Scott Kay Engraved Platinum Classic Band Stamped PT950;
- D. Hamra Jewelers Engraved Custom Platinum Diamond Ring;
- E. Patek Philippe Stainless Steel Nautilus Watch and Steel Bracelet with Serial Number A384EAP;
- F. Engraved Custom Platinum Eternity Band;
- G. Rolex Day-Date Pearlmaster Watch with Serial Number G527156 and Masterpiece Bracelet;
- H. Cartier Pasha Seatimer Chronograph Watch with a Serial Number 2995604011MX and Black Rubber Bracelet.

INSTRUCTION NO. _____

FORFEITURE: BURDEN OF PROOF

As explained above, it is the Government's burden to establish the required connection between the property and the offenses committed by the Defendant which would make the property subject to forfeiture. You should find that the Government has met its burden if it has established that connection by a "preponderance of the evidence."

This is different from the standard that applied to the guilt or innocence of the Defendant. At that stage of the case, the Government was required to meet its burden "beyond a reasonable doubt." At this forfeiture stage, however, the Government need only establish its proof by a "preponderance of the evidence."

"Preponderance of the evidence" means that the Government has to produce evidence which, considered in light of all of the facts, leads you to believe that what the Government claims is more likely true than not true. To put it differently, if you were to put the Government's evidence and the Defendant's evidence on opposite sides of a balance scale, the Government's evidence would have to make the scale tip slightly on its side of the balance. If the Government's evidence fails to do this, then the Government has not met its burden of proof.

You may consider any evidence, including testimony, offered by the parties at any time during the guilt phase of the trial and during the forfeiture phase of the trial.

Libretti v. United States, 516 U.S. 29, 116 S. Ct. 356 (1995) (criminal forfeiture is part of sentence and not a substantive element of offense, so "preponderance of the evidence" standard applies).

INSTRUCTION NO. _____

FORFEITURE: JURY'S CONSIDERATION

You are instructed that your previous determination that the Defendant is guilty of the offenses with which he was charged in Counts 1 through 23 is binding on this part of the proceedings, and you must not discuss or determine anew whether he is guilty or not guilty on those charges.

You are also instructed that what happens to any property that you find has a connection to those offenses is exclusively a matter for the Court to decide. You should not consider what might happen to the property in making your determination. You should disregard any claims of ownership that other persons may have to the property. The interests that other persons may have in the property will be taken into account by the court at a later time. Similarly, any claims that the forfeiture of the property would constitute excessive punishment will be taken into account by the court at a later time. Your only concern is to determine whether the property has the required connection to the Defendant's offenses.

You are further instructed that, other than the standard of proof, all of the instructions previously given to you concerning your consideration of the evidence, the credibility or believability of the witnesses, your duty to deliberate together and the necessity of a unanimous verdict, will all continue to apply during your deliberations concerning the forfeiture claims.

INSTRUCTION NO. _____

FORFEITURE PURSUANT TO 18 U.S.C. § 982(a)(2)

(Counts 1-10 – Wire Fraud)

Section 982(a)(2) of Title 18 of the United States Code provides, in part, that whomever is convicted of Wire Fraud (18 U.S.C. §1343) shall forfeit to the United States any property constituting, or derived from, proceeds obtained directly or indirectly, as the result of a violation of Wire Fraud.

The Second Superseding Indictment and Bill of Particulars alleges that the Defendant's properties identified in these instructions and in the special verdict form are forfeitable because they are property constituting, or derived from, proceeds obtained directly or indirectly, in a violation of Wire Fraud, for which the Defendant was found guilty.

These properties are set out in a Special Verdict Form which follows at the end of these instructions. As to each such property you must determine whether or not the applicable connection exists.

18 USC § 982(a)(2)

INSTRUCTION NO. ____

FORFEITURE: PROPERTY OWNERSHIP

You will have noted that certain properties may be held in the name of a person or entity other than or in addition to that of the Defendant. You may have also noted evidence suggesting a person or persons other than the Defendant may have or claim an interest in some part of a property sought to be forfeited.

I charge you that in reaching your decision as to each item of property you should simply disregard any such title or claim of ownership of such property. Instead, you should focus only on deciding, as I have previously charged, whether the property was connected to an offense or offenses in a way or ways that make it forfeitable.

Any interest that another person may have or claim to have in such property will be taken into account later by this Court in a separate proceeding and is not for your consideration as jurors.

Rule 32.2(b)(1), (2) and (4), Federal Rules of Criminal Procedure; 21 U.S.C. § 853(c); 18 U.S.C. § 982(b)(1)(A) (incorporating by reference specified subsections of 21 U.S.C. §853).

INSTRUCTION NO. ____

INSTRUCTION FOR SPECIAL VERDICT FORM FOR FORFEITURE

It is your duty to determine what property, if any, is connected to the Defendant's offenses in one or more ways that make the property forfeitable as the result of the Defendant's conviction. While deliberating, you may consider any evidence, including testimony, offered by the parties at any time during this trial.

A Special Verdict Form for Forfeiture has been prepared for your use. You may answer by simply putting an "X" or check mark in the space provided next to the words "Yes" or "No" in the space provided. You will take the Special Forfeiture Verdict Form to the jury room and when you have reached unanimous agreement as to each item of property, you will have your foreperson fill in the form and notify the Court Bailiff. The foreperson must then sign and date the Special Forfeiture Verdict Form.

SPECIAL FORFEITURE VERDICT FORM

We, the jury, return the following Special Verdict, as to Defendant David Allen Harbour regarding the properties described below

We, the jury, unanimously find by a preponderance of the evidence that they are property constituting, or derived from, proceeds obtained directly or indirectly, in a violation of Wire Fraud, for which the Defendant was found guilty:

1. 18 Karat White Gold Diamond Cuff Bracelet; [] Yes [] No
2. 18 Karat Yellow and White Gold Custom Kansas University Jayhawk Pendent and Cable Chain; [] Yes [] No
3. Scott Kay Engraved Platinum Classic Band Stamped PT950; [] Yes [] No
4. Hamra Jewelers Engraved Custom Platinum Diamond Ring; [] Yes [] No
5. Patek Philippe Stainless Steel Nautilus Watch and Steel Bracelet with Serial Number A384EAP; [] Yes [] No
6. Engraved Custom Platinum Eternity Band; [] Yes [] No
7. Rolex Day-Date Pearlmaster Watch with Serial Number G527156 and Masterpiece Bracelet; [] Yes [] No
8. Cartier Pasha Seatimer Chronograph Watch with a Serial Number 2995604011MX and Black Rubber Bracelet. [] Yes [] No

This _____ day of February, 2023.

Foreperson

INSTRUCTION NO. _____

FORFEITURE PURSUANT TO 18 U.S.C. § 982(a)(2)

(Counts 11-12 – Mail Fraud)

Section 982(a)(2) of Title 18 of the United States Code provides, in part, that whomever is convicted of Mail Fraud (18 U.S.C. §1341) shall forfeit to the United States any property constituting, or derived from, proceeds obtained directly or indirectly, as the result of a violation of Mail Fraud.

The Second Superseding Indictment and Bill of Particulars alleges that the Defendant's properties identified in these instructions and in the special verdict form are forfeitable because they are property constituting, or derived from, proceeds obtained directly or indirectly, in a violation of Mail Fraud, for which the Defendant was found guilty.

These properties are set out in a Special Verdict Form which follows at the end of these instructions. As to each such property you must determine whether or not the applicable connection exists.

18 USC § 982(a)(2)

INSTRUCTION NO. ____

FORFEITURE: PROPERTY OWNERSHIP

You will have noted that certain properties may be held in the name of a person or entity other than or in addition to that of the Defendant. You may have also noted evidence suggesting a person or persons other than the Defendant may have or claim an interest in some part of a property sought to be forfeited.

I charge you that in reaching your decision as to each item of property you should simply disregard any such title or claim of ownership of such property. Instead, you should focus only on deciding, as I have previously charged, whether the property was connected to an offense or offenses in a way or ways that make it forfeitable.

Any interest that another person may have or claim to have in such property will be taken into account later by this Court in a separate proceeding and is not for your consideration as jurors.

Rule 32.2(b)(1), (2) and (4), Federal Rules of Criminal Procedure; 21 U.S.C. § 853(c); 18 U.S.C. § 982(b)(1)(A) (incorporating by reference specified subsections of 21 U.S.C. §853).

INSTRUCTION NO. ____

INSTRUCTION FOR SPECIAL VERDICT FORM FOR FORFEITURE

It is your duty to determine what property, if any, is connected to the Defendant's offenses in one or more ways that make the property forfeitable as the result of the Defendant's conviction. While deliberating, you may consider any evidence, including testimony, offered by the parties at any time during this trial.

A Special Verdict Form for Forfeiture has been prepared for your use. You may answer by simply putting an "X" or check mark in the space provided next to the words "Yes" or "No" in the space provided. You will take the Special Forfeiture Verdict Form to the jury room and when you have reached unanimous agreement as to each item of property, you will have your foreperson fill in the form and notify the Court Bailiff. The foreperson must then sign and date the Special Forfeiture Verdict Form.

SPECIAL FORFEITURE VERDICT FORM

We, the jury, return the following Special Verdict, as to Defendant David Allen Harbour regarding the properties described below

We, the jury, unanimously find by a preponderance of the evidence that they are property constituting, or derived from, proceeds obtained directly or indirectly, in a violation of Mail Fraud, for which the Defendant was found guilty:

1. 18 Karat White Gold Diamond Cuff Bracelet; [] Yes [] No
2. 18 Karat Yellow and White Gold Custom Kansas University Jayhawk Pendent and Cable Chain; [] Yes [] No
3. Scott Kay Engraved Platinum Classic Band Stamped PT950; [] Yes [] No
4. Hamra Jewelers Engraved Custom Platinum Diamond Ring; [] Yes [] No
5. Patek Philippe Stainless Steel Nautilus Watch and Steel Bracelet with Serial Number A384EAP; [] Yes [] No
6. Engraved Custom Platinum Eternity Band; [] Yes [] No
7. Rolex Day-Date Pearlmaster Watch with Serial Number G527156 and Masterpiece Bracelet; [] Yes [] No
8. Cartier Pasha Seatimer Chronograph Watch with a Serial Number 2995604011MX and Black Rubber Bracelet. [] Yes [] No

This _____ day of January, 2023.

Foreperson

INSTRUCTION NO. ____

FORFEITURE PURSUANT TO 18 U.S.C. § 982(a)(1)

(Counts 13-23 – Transactional Money Laundering)

Section 982(a)(1) of Title 18 of the United States Code provides, in part, that whomever is convicted of Transactional Money Laundering (18 U.S.C. §1957) shall forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property.

The Second Superseding Indictment and Bill of Particulars alleges that the Defendant's properties identified in these instructions and in the special verdict form are forfeitable because they are property involved in Transactional Money Laundering, or property traceable to such property, for which the Defendant was found guilty.

These properties are set out in a Special Verdict Form which follows at the end of these instructions. As to each such property you must determine whether or not the applicable connection exists.

18 USC § 982(a)(1)

INSTRUCTION NO. ____

FORFEITURE: PROPERTY OWNERSHIP

You will have noted that certain properties may be held in the name of a person or entity other than or in addition to that of the Defendant. You may have also noted evidence suggesting a person or persons other than the Defendant may have or claim an interest in some part of a property sought to be forfeited.

I charge you that in reaching your decision as to each item of property you should simply disregard any such title or claim of ownership of such property. Instead, you should focus only on deciding, as I have previously charged, whether the property was connected to an offense or offenses in a way or ways that make it forfeitable.

Any interest that another person may have or claim to have in such property will be taken into account later by this Court in a separate proceeding and is not for your consideration as jurors.

Rule 32.2(b)(1), (2) and (4), Federal Rules of Criminal Procedure; 21 U.S.C. § 853(c); 18 U.S.C. § 982(b)(1)(A) (incorporating by reference specified subsections of 21 U.S.C. §853).

INSTRUCTION NO. ____

INSTRUCTION FOR SPECIAL VERDICT FORM FOR FORFEITURE

It is your duty to determine what property, if any, is connected to the Defendant's offenses in one or more ways that make the property forfeitable as the result of the Defendant's conviction. While deliberating, you may consider any evidence, including testimony, offered by the parties at any time during this trial.

A Special Verdict Form for Forfeiture has been prepared for your use. You may answer by simply putting an "X" or check mark in the space provided next to the words "Yes" or "No" in the space provided. You will take the Special Forfeiture Verdict Form to the jury room and when you have reached unanimous agreement as to each item of property, you will have your foreperson fill in the form and notify the Court Bailiff. The foreperson must then sign and date the Special Forfeiture Verdict Form.

SPECIAL FORFEITURE VERDICT FORM

We, the jury, return the following Special Verdict, as to Defendant David Allen Harbour regarding the properties described below

We, the jury, unanimously find by a preponderance of the evidence that they are property involved in Transactional Money Laundering, or property traceable to such property, in a violation of Transactional Money Laundering, for which the Defendant was found guilty:

1. 18 Karat White Gold Diamond Cuff Bracelet; [] Yes [] No
2. 18 Karat Yellow and White Gold Custom Kansas University Jayhawk Pendent and Cable Chain; [] Yes [] No
3. Scott Kay Engraved Platinum Classic Band Stamped PT950; [] Yes [] No
4. Hamra Jewelers Engraved Custom Platinum Diamond Ring; [] Yes [] No
5. Patek Philippe Stainless Steel Nautilus Watch and Steel Bracelet with Serial Number A384EAP; [] Yes [] No
6. Engraved Custom Platinum Eternity Band; [] Yes [] No
7. Rolex Day-Date Pearlmaster Watch with Serial Number G527156 and Masterpiece Bracelet; [] Yes [] No
8. Cartier Pasha Seatimer Chronograph Watch with a Serial Number 2995604011MX and Black Rubber Bracelet. [] Yes [] No

This _____ day of January, 2023.

Foreperson